

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WILLIAM K. ZIMMERMAN,)	
)	
Plaintiff,)	
)	No: 3:07-0933
v.)	Judge Trauger/Bryant
)	
WYATT WILBURN, et al.,)	
)	
Defendants.)	

TO: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

Pending before the Court is the defendants' motion to dismiss for failure to state a claim upon which relief can be granted and for failure to state a case or controversy for judicial resolution. (Docket Entry No. 7).

This motion has been referred to the undersigned Magistrate Judge for report and recommendation. (Docket Entry No. 2).

After plaintiff failed to respond to defendants' motion to dismiss within the time allowed, the undersigned Magistrate Judge on January 9, 2008, issued an order requiring the plaintiff to show cause on or before January 22, 2008, why the defendants' motion to dismiss should not be granted. A copy of this order was mailed by the Clerk to the plaintiff, but was returned undelivered on February 5, 2008, marked "unclaimed." (Docket Entry No. 11). As of the date of this Report and Recommendation, plaintiff still has filed no response to defendants' motion to dismiss. The undersigned Magistrate Judge finds that the plaintiff has failed to

prosecute this complaint, and, therefore, the complaint should be dismissed without prejudice.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the complaint be **dismissed** without prejudice for failure to prosecute.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 21st day of April 2008.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge